Detroit Tubing Mill, Inc. *and* Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 7-CA-21004

24 February 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 23 September 1983 Administrative Law Judge Stephen J. Gross issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Detroit Tubing Mill, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT question employees about union activity.

WE WILL NOT discourage membership in, or lawful strike activity on behalf of, Teamsters Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by unlawfully refusing to recall striking employees to existing vacancies after they have made unconditional offers to return to work.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reinstate those employees who engaged in the 22 and 26 July 1982 strike against us who have not been recalled because we filled their positions with new employees hired on 27 July 1982.

WE WILL reimburse, with interest, those employees who engaged in the 22 and 26 July 1982 strike against us who suffered any losses because we filled their positions with new employees hired on 27 July 1982.

DETROIT TUBING MILL, INC.

DECISION

STEPHEN J. GROSS, Administrative Law Judge: The complaint alleges that the Respondent Detroit Tubing Mill (the Company): (1) unlawfully failed to recall employees who had been on strike and who had made unconditional offers to return; and (2) interrogated and threatened employees concerning protected concerted activities. The Company, while admitting the complaint's jurisdictional allegations, denies that it violated the National Labor Relations Act in any respect.

The Company's Replacement of Striking Employees

On July 22, 1982, the Company's employees engaged in an economic strike for the purpose of compelling the Company to recognize Teamsters Local 299 as their exclusive collective-bargaining representative. On July 26 the striking employees made a written unconditional offer to return to work.

On July 27—one day after the strikers' unconditional offer to return—Douglas Crockett, Calvin Crum, and Dale Warner applied to Detroit Tubing for work. None of the three had previously been employed by the Company, and the Company had not made any job commitments to them. The Company offered jobs to the three that same day, July 27. Crockett, Crum, and Warner began working at Detroit Tubing on August 2, performing work previously done by the striking employees. The Company did not recall three strikers because Crockett, Crum, and Warner occupied the jobs the strikers otherwise would have returned to.

Since the Company filled job vacancies that existed at the time of the strikers' offer to return by hiring new employees rather than by recalling strikers, the Company violated Section 8(a)(3) and (1) of the National Labor Relations Act. *NLRB v. Fleetwood Trailer Co.*, 389 U.S. 375 (1967).

The Interrogation of Employees

On July 19, 1982, employee Kenneth Eberle was approached by his immediate supervisor, Plant Manager Edwin Sipowicz.[1] Sipowicz, who earlier that day had

[1] The Company has admitted that Sipowicz is a supervisor within the meaning of Sec. 2(11) of the Act.

been informed by another employee that the Company's employees were attempting to organize, asked Eberle if he had been approached about joining a union. Eberle said that he had been. Sipowicz then asked how many other employees had been approached and if anyone had been harassed into signing a card. Finally, Sipowicz stated that he was concerned with employee discontent, and asked Eberle if Sipowicz had done "something wrong" or if Eberle had any "problems or concerns" that Sipowicz did not know about and might correct.[2]

Sipowicz' questioning of Eberle about union activity amounted to coercive interrogation and thus violated Section 8(a)(1) of the Act. As of July 19 organizing activity had only recently begun, and no union had made any claim of majority status. The questioning thus had no legitimate purpose. Moreover such inquiries have long been held to interfere with the employees' free exercise of their Section 7 rights. See *Bin-Dicator Co.*, 143 NLRB 964, 969-970, 980 (1963), enfd. in pertinent part 356 F.2d 210 (6th Cir. 1966).[3]

THE REMEDY

In respect to those employees who went out on strike and whom the Company failed to recall or delayed recalling by reason of its hiring of Crockett, Crum, and Warner, the Company will be required to: (1) make all such employees whole for any loss of earnings they may have suffered by reason of the Company's discrimination against them; and (2) reinstate all such employees not yet recalled to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges. Backpay shall be calculated in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *Florida Steel Corp.*, 231 NLRB 651 (1977).

The Company will also be required to cease and desist from its unlawful acts, to notify its employees of the Board's order, and to take various other actions relating to the above requirements.

ORDER[4]

The Respondent, Detroit Tubing Mill, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees concerning union activities.

(b) Discouraging membership in or lawful strike activity on behalf of Local 299, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by unlawfully refusing to recall striking employees to existing vacancies after they have made unconditional offers to return to work.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Reinstate immediately to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, those employees who participated in the strike against the Company in July 1982 and who have not been recalled because of the Company's hiring of replacements on July 27, 1982.

(b) Make whole any employee who participated in the strike against the Company in July 1982 and who suffered any losses because of the Company's hiring of replacements on July 27 in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Post at the Respondent's plant copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due employees under the terms of this Order.

(e) Notify the Regional Director for Region 7 in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[2] The foregoing represents a composite of the testimony of Eberle and Sipowicz. Eberle testified that Sipowicz asked him if he had signed an authorization card. But I do not credit that testimony. Employee George Chestnut also testified about interrogation by Sipowicz, but I do not credit any of Chestnut's testimony in that regard.

[3] The complaint does not allege unlawful solicitation of grievances, and I accordingly do not pass on whether Sipowicz' questions about whether he had done "something wrong" and about whether Eberle had any "problems or concerns" violated the Act.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."